



**STATE OF TENNESSEE**  
**DEPARTMENT OF ENVIRONMENT AND CONSERVATION**  
**Division of Underground Storage Tanks**  
**4th Floor, L&C Tower**  
**401 Church Street**  
**Nashville, Tennessee 37243-1541**

January 22, 2008

Eddie Noeman  
D/B/A Mason Market  
P. O. Box 366  
Mason, Tennessee 38049-0366

Certified Mail No. 7006 2760 0000 6703 5986

Re: Mason Market Center  
285 Highway 70  
Mason, Tennessee 38049  
Facility ID # 8-840024  
Enforcement Case # UST07-0207

Dear Mr. Noeman:

Enclosed is an Order and Assessment issued by the Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks. Please read it carefully and pay special attention to the NOTICE OF RIGHTS section.

If you have any questions about this matter, please call Rhonda Key at (615) 532-0972.

Sincerely,

Stanley R. Boyd  
Director

cc: Enforcement file  
Memphis Field Office

**STATE OF TENNESSEE**  
**DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF UNDERGROUND</b>
	)	<b>STORAGE TANKS</b>
<b>EDDIE NOEMAN</b>	)	
<b>D/B/A MASON MARKET</b>	)	
	)	<b>CASE NO. UST07-0207</b>
<b>RESPONDENT</b>	)	

**ORDER AND ASSESSMENT**

NOW COMES James H. Fyke, Commissioner of the Tennessee Department of Environment and Conservation (the "Commissioner"), and states:

**PARTIES**

**I.**

James H. Fyke is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation (the "Department"), and among other duties and responsibilities, he is charged with the responsibility for administering and enforcing the **Tennessee Petroleum Underground Storage Tank Act** (the "Act") (T.C.A. § 68-215-101 *et seq.*). Stanley R. Boyd is the duly appointed Director of the Underground Storage Tank Division (the "Division"). He has received written delegation from the Commissioner to administer and enforce particular aspects of the Act.

**II.**

Eddie Noeman (hereinafter, the "Respondent"), is the registered owner of two (2) underground storage tank system(s) located at Mason Market Center, 285 Highway 70, Mason, Tennessee 38049. Service of process may be made on Eddie Noeman, D/B/A Mason Market, P. O. Box 366, Mason, Tennessee 38049-0366.

## **JURISDICTION**

### **III.**

When the Director finds upon investigation that any provision of the Tennessee Code Annotated, § 68-215-101 *et seq.*, is not being carried out, and that effective measures are not being taken to comply with the provisions of the Act, pursuant to T.C.A. § 68-215-114, he may issue an Order for correction to the responsible party, and this Order shall be complied with within the time limit specified in the Order. Pursuant to T.C.A. § 68-215-106(c)(3), the Director may revoke and remove the petroleum underground storage tanks certificate from any petroleum storage tank owner or operator who violates any provisions of the Act or the regulations promulgated thereunder. Further, the Director has the Authority to assess civil penalties against any person who violates or fails to comply with the Act, pursuant to T.C.A. § 68-215-121 of the Act. Pursuant to T.C.A. §§ 68-215-107 and 113, rules of the Department governing underground storage tanks have been promulgated and are effective as the Official Compilation of the Rules and Regulations of the State of Tennessee, Chapter 1200-1-15.

### **IV.**

The Respondent is a person as defined at T.C.A. § 68-215-103(11), and has violated the Act as hereinafter stated.

## **FACTS**

### **V.**

On or about October 23, 2002, the Division received a Notification for Underground Storage Tanks form, signed by Eddie Noeman, listing the Respondent as the owner of the two (2) underground storage tank (UST) system(s), located at Mason Market Center, 285 Highway 70, Mason, Tennessee 38049. The Division assigned the facility ID #8-840024.

### **VI.**

On or about July 16, 2007, Division Personnel sent a letter confirming a compliance inspection to be conducted at the subject facility on August 2, 2007.

## **VII.**

On or about August 2, 2007, Division Personnel performed a compliance inspection at the subject facility. The inspector discovered the following violations:

- Failure to have release detection on the tanks in accordance with Rule 1200-1-15-.04(1)(a)1.
- Failure to have release detection on the pressurized lines in accordance with Rule 1200-1-15-.04(2)(b)(1)(ii).
- Failure to test the automatic line leak detectors in accordance with Rule 1200-1-15-.04(4)(a).
- Failure to test the galvanic corrosion protection systems in accordance with Rule 1200-1-15-.02(4)(c)2(i).
- Failing to demonstrate that overfill is present in accordance with Rule 1200-1-15-.02(3)(a)1(ii).
- Failure to have the monthly spill bucket inspection log in accordance with Rule 1200-1-15-.02(3)(b)3.
- Failure to have the quarterly dispenser inspection log in accordance with Rule 1200-1-15-.04(1)(f).
- Failure to cooperate with the Division in accordance with Rule 1200-1-15-.03(2).  
(Specifically, the Respondent did not provide compliance documentation nor did he attend the inspection as directed by the Division.)

## **VIII.**

On or about August 8, 2007, Division Personnel sent a Notice of Violation (NOV) letter to the Respondent. The letter cited the findings discovered during the inspection and required the Respondent to submit to the Division by September 10, 2007, documentation to demonstrate compliance.

## **IX.**

The following violation was added after the Respondent failed to meet the first (NOV) deadline of October 11, 2007:

- Failure to cooperate fully with the Division by not submitting requested documents in a timely manner, is a violation of rule 1200-1-15-.03(2).

**X.**

On or about October 11, 2007, Division Personnel sent an Enforcement Action Notice (EAN) letter to the Respondent. The letter listed documentation still needed to demonstrate compliance.

**XI.**

To date, the Division has not received documentation required to demonstrate compliance.

**VIOLATIONS**

**XII.**

By operating a petroleum underground storage tank system without complying with the Act, the Respondent has violated T.C.A. § 68-215-104(2), which says:

It is unlawful to: Construct, alter or operate a petroleum underground storage tank in violation of this chapter or the rules or regulations established pursuant thereto;

**XIII.**

By failing to have release detection on the tanks, the Respondent has violated Rule 1200-1-15-.04(1)(a)1, which states:

**1200-1-15-.04 RELEASE DETECTION.**

- (1) General requirements for release detection.
  - (a) Owners and/or operators of new and existing UST systems shall provide a method, or combination of methods, of release detection that:
    - 1. Can detect a release from any portion of the tank and the connected underground piping that routinely contains petroleum;

**XIV.**

By failing to have a line tightness test on the pressurized piping systems, the Respondent has violated Rule 1200-1-15-.04(2)(b)1(ii), which states:

1200-1-15-.04 RELEASE DETECTION.

- (2) Requirements for petroleum UST systems. Owners and/or operators of petroleum UST systems shall provide release detection for tanks and piping as follows:
  - (b) Piping. Underground piping that routinely contains petroleum shall be monitored for releases in a manner that meets one of the following requirements:
    - 1. Pressurized piping. Underground piping that conveys petroleum under pressure shall:
      - (ii) Have an annual line tightness test conducted in accordance with subparagraph (4)(b) of this rule or have monthly monitoring conducted in accordance with subparagraph (4)(c) of this rule.

**XV.**

By failing to test the line leak detectors annually the Respondent has violated Rule 1200-1-15-.04(4)(a) which states:

1200-1-15-.04 RELEASE DETECTION.

- (4) Methods of release detection for piping.

Each method of release detection for piping used to meet the requirements of rule 1200-1-15-.04(2) shall be conducted in accordance with the following:

  - (a) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of petroleum through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour. An annual test of the operation of the leak detector shall be conducted in accordance with the manufacture's requirements.

**XVI.**

By failing to conduct periodic testing of cathodic protection every three (3) years, the Respondent has violated Rule 1200-1-15-.02(4)(c)2(i), which states:

1200-1-15-.02 UST SYSTEMS: INSTALLATION AND OPERATION.

(4) Corrosion protection.

(c) Operation and maintenance of corrosion protection.

All owners and/or operators of steel UST systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store petroleum:

2. All UST systems equipped with cathodic protection systems shall be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(i) Frequency. All cathodic protection systems shall be tested within six (6) months of installation and at least every three (3) years thereafter;

**XVII.**

By failing to verify overfill, the Respondent has violated Rule 1200-1-15-.02(3)(a)1(ii), which states:

1200-1-15-.02 UST SYSTEMS: INSTALLATION AND OPERATION.

(3) Spill and overfill prevention.

(a) Equipment.

1. Except as provided in part 2 of this subparagraph, to prevent spilling and overfilling associated with petroleum transfer to the UST system, owners and/or operators shall use the following spill and overfill prevention equipment:

(ii) Overfill prevention equipment that will:

(I) Automatically shut off flow into the tank when the tank is no more than ninety-five percent (95%) full;

- (II) Alert the transfer operator when the tank is no more than ninety percent (90%) full by restricting the flow into the tank or triggering a high-level alarm; or
- (III) Restrict flow thirty (30) minutes prior to overfilling, alert the operator with a high level alarm one (1) minute before overfilling, or automatically shut off flow into the tanks so that none of the fittings located on top of the tank are exposed to product due to overfilling.

### **XVIII.**

By failing to inspect spill buckets monthly and maintain a log of the last twelve inspections, the Respondent has violated Rule 1200-1-15-.02(3)(b)3, which states:

#### **1200-1-15-.02 UST SYSTEMS: INSTALLATION AND OPERATION.**

- (3) Spill and overfill prevention.
  - (b) Operating requirements.
    - 3. Spill catchment basins shall be visually inspected by the owner and/or operator at least once per month to assure the integrity of the storage space provided for spill containment. A log of these inspections showing at a minimum the last twelve (12) months shall be maintained by the owner and/or operator.

### **XIX.**

By failing to inspect the dispensers quarterly and maintain a log of last twelve months of inspection, the Respondent has violated Rule 1200-1-15-.04(1)(f), which states:

#### **1200-1-15-.04 RELEASE DETECTION.**

- (1) General requirements for release detection.
  - (f) The dispenser cover shall be opened and a visual inspection for petroleum releases, including seeps and drips, shall be performed at least quarterly, that is, at least once every three (3) months. A log of these inspections showing at a



minimum the last twelve (12) months shall be maintained by the owner and/or operator.

## **XX.**

By failing to fully cooperate with the Division (during the inspection and afterwards), the Respondent violated Rule 1200-1-15-.03(5) which states:

### **1200-1-15-.03 GENERAL OPERATING REQUIREMENTS.**

- (2) Reporting and record keeping. Owners and/or operators of UST systems shall cooperate fully with inspections, monitoring and testing conducted by the division, as well as requests for document submission, testing, and monitoring by the owner and/or operator in accordance with the Tennessee Petroleum Underground Storage Tank Act T.C.A. §68-215-107.

## **ORDER**

### **XXI.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 68-215-107, 68-215-109, 68-215-114, and 68-215-121;

I, Stanley R. Boyd, acting as the authorized representative of the Commissioner, hereby issue the following ASSESSMENTS and ORDERS to the Respondent:

1. Based on standing non-compliance at this location and pursuant to T.C.A. § 68-215-106(c)(3), **the current petroleum underground storage tank certificate for the subject facility is hereby revoked.**
2. The Respondent shall complete the following activities:
  - (a) Immediately upon receipt of this order, the Respondent shall cease operation of the two (2) underground storage tank systems at this facility; and
  - (b) Within seven (7) days of receipt of this order, the Respondent shall return the current petroleum underground storage tank certificate to the Division; and
  - (c) Within thirty (30) days of receipt of this order, the Respondent shall empty the underground storage tank system(s) so that no more than one (1) inch of product

is present, provide documentation to the Division demonstrating the legal removal of product from the underground storage tanks; and

- (d) Within forty five (45) days of receipt of this ORDER, the Respondent shall submit an amended notification form to report the temporary closure of the underground storage tanks system(s). The form shall be completed accurately and in its entirety. The Respondent shall submit the original form to the Nashville Central Office and a copy of the form to the Memphis Field Office.

3. The Respondent shall pay a TOTAL CIVIL PENALTY in the amount of THIRTY TWO THOUSAND SEVEN HUNDRED DOLLARS (\$32,700.00). This amount shall be paid as follows:

- (a) Within thirty (30) days of receipt of this Order, the Respondent shall pay an up-front CIVIL PENALTY in the amount of TWENTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$22,500.00). This amount consists of:
  - (i) Two (2) separate violations assessed at TWO THOUSAND FOUR HUNDRED DOLLARS (\$2,400.00) per UST system for a total of THREE THOUSAND DOLLARS (\$4,800.00) for failure to have release detection on the tanks.
  - (ii) Two (2) separate violations assessed at ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) per UST system for a total of THREE THOUSAND DOLLARS (\$3,000.00) for failure to have release detection on the pressurized lines.
  - (iii) Two (2) separate violations assessed at SEVEN HUNDRED FIFTY DOLLARS (\$750.00) per piping system for a total of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) for failure to test the automatic line leak detectors.
  - (iv) Four (4) separate violations assessed at ONE THOUSAND DOLLARS (\$1,000.00) per corrosion protection system per tank for a total of FOUR THOUSAND DOLLARS (\$4,000.00) for failure to test the galvanic corrosion protection systems.
  - (v) Two (2) separate violations assessed at ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) per piping system test for a total of

THREE THOUSAND DOLLARS (\$3,000.00) for failure to demonstrate that overfill is present.

- (vi) Ten (10) separate violations assessed at ONE HUNDRED DOLLARS (\$100.00) per tank per month for a total of ONE THOUSAND DOLLARS (\$1,000.00) for failure to have the monthly spill bucket inspection logs.
- (vii) Four (4) separate violations assessed at FIFTY DOLLARS (\$50.00) per inspection per dispenser for a total of TWO HUNDRED DOLLARS (\$200.00) for failure to have the quarterly dispenser inspection log.
- (viii) Two (2) separate violations assessed at TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) each for a total of FIVE THOUSAND DOLLARS (\$5,000.00) for failure to fully cooperate with the Division before the inspection and afterwards.
- (b) Within forty-five (45) days of receipt of this Order, the Respondent shall pay TEN THOUSAND DOLLARS (\$10,000.00) if and only if, the Respondent fails to timely comply with any or all of the provisions of items 2(a) through 2(c).
- (c) Within forty-five (45) days of receipt of this Order, the Respondent shall pay TWO HUNDRED DOLLARS (\$200.00) if and only if, the Respondent fails to timely comply with any or all of the provisions of item 2(d).

4. The Respondent shall comply with all applicable requirements of the Act and the Tennessee Petroleum Underground Storage Tank Regulations (Rule 1200-1-15-.01 *et seq.*) in the future.

Furthermore, the Respondent is advised that the foregoing Order is not in any way to be construed as a waiver, express or implied, of any provision of the law or regulations, including but not limited to, future enforcement for violations of the Act and Regulations which are not charged as violations in this Order. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

## **NOTICE OF RIGHTS**

The Respondent is hereby advised that in accordance with Tennessee Code Annotated §§ 68-215-119 and 68-215-121, the Respondent may secure review of this Order and Assessment by filing with the Director a written petition setting forth each ground and reason for the Respondent's objections and must file the written petition within thirty (30) days of service of this Order and Assessment. If the required written petition is filed within thirty (30) days of service of this Order and Assessment, then the Respondent shall have perfected an appeal and have an opportunity for a hearing before the Tennessee Petroleum Underground Storage Tank Board. If the required written petition is not filed within thirty (30) days of service of this Order and Assessment, then the Respondent will be deemed to have consented to the Order and confessed judgment to the Assessment, and it will not be subject to review pursuant to Tennessee Code Annotated §§ 68-215-119 and 68-215-121.

The hearing for which the Respondent properly petitions is a contested case hearing governed by Tennessee Code Annotated § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act). The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify at trial.

Issued by the Director of the Division of Underground Storage Tanks this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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Stanley R. Boyd, Director

Division of Underground Storage Tanks

Tennessee Department of Environment and Conservation

Appeals, payment of the civil penalty, and/or other documents pertaining to this Order should be sent to:

Division of Underground Storage Tanks  
Rhonda Key  
4<sup>th</sup> Floor, L & C Tower  
401 Church St.  
Nashville, TN 37243-1541

Payment of the civil penalty shall be made to the “Treasurer, State of Tennessee”. The case number shown on the first page of the enclosed Order should be written on said payment(s).

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Rhonda Key  
Environmental Specialist 4  
Enforcement and Compliance Section